

Minutes (Draft)  
Scientific Advisory Committee Meeting  
February 6, 2007 at 9:00 a.m.  
DFS Central Laboratory, Classroom 1

Committee Members Present:

Dr. Jose Almirall  
Dr. Frederick Bieber  
Mr. Joseph Bono, Chair  
Dr. Dale Carpenter  
Mr. Dominic Denio  
Dr. Arthur Eisenberg  
Mr. Barry Fisher  
Ms. Jo Ann Given  
Dr. Dan Krane  
Ms. Demris Lee  
Mr. Pete Marone  
Mr. Kenneth Smith

Committee Members Absent:

Dr. Alphonse Poklis

Staff Members Present:

Ms. Wanda Adkins, Office Manager  
Mr. Jeff Ban, Forensic Biology Section Chief  
Dr. David Barron, Central Laboratory Director  
Mr. Gene Colburn, Human Resources Analyst  
Ms. Michele Gowdy, Department Counsel  
Ms. Linda Jackson, Drug Section Chief  
Ms. Meghan Kish, Committee Secretary  
Mr. Ron Layne, Director of Administration and Finance  
Ms. Alka Lohmann, Breath Alcohol Section Chief  
Ms. Elise Mirza, Policy Analyst  
Mr. Kevin Patrick, Western Laboratory Director  
Ms. Susan Scholl, Eastern Laboratory Director  
Mr. Steven Sigel, Deputy Director

Call to Order:

Mr. Bono called the meeting to order at 9:07 a.m.

Adoption of Agenda:

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48 Mr. Bono directed the Committee's attention to item number 7 of the draft agenda, titled  
49 "Legislation." He explained that, since that topic is a legal issue, current legislation is not  
50 within the purview of the Committee and therefore that item would be stricken from the  
51 agenda. There were no objections to this change, and thus the agenda was adopted after  
52 the one amendment.

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54 Adoption of Minutes:

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56 Mr. Bono asked if there were any changes that needed to be made to the draft minutes.  
57 There were none.

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59 Mr. Denio moved that the draft minutes be approved. The motion was seconded, and  
60 passed unanimously.

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62 Introduction of New Department Director:

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64 Mr. Bono announced to the Committee that Mr. Pete Marone was appointed by the  
65 Governor as the Director of the Department. The Committee offered their  
66 congratulations.

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68 Chairman's Report:

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70 Mr. Bono introduced Mr. Barry Fisher, who was appointed to the Committee as a  
71 Member of the American Society of Crime Laboratory Directors.

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73 Director's Report:

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75 Mr. Marone handed out a summary of the Department's Budget requests for 2007. With  
76 the help of Mr. Ron Layne, Director of Administration and Finance for the Department,  
77 he explained to the Committee what the Department had and had not received in funding  
78 for various ongoing projects.

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80 Mr. Marone explained that the Department had received funding to continue the forensic  
81 scientist compensation efforts, which allow the Department to remain competitive with  
82 Federal Agencies in terms of pay increases over the first several years of employment,  
83 and to compensate forensic scientists for outside efforts such as teaching, advanced  
84 degrees, and publications.

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86 Mr. Marone also updated the Committee on the expansion efforts of regional laboratories,  
87 namely the Central and Western Laboratories. He explained that the Central  
88 administration will be moving into a building across the street to increase laboratory  
89 space in the current building. Additionally, the Department is considering the acquisition  
90 of land adjacent to the Roanoke Laboratory.

Mr. Marone next explained that it is becoming increasingly difficult to locate parts for the current Breath Alcohol instruments. Although the instruments currently in Department possession are comparable in accuracy to the newer versions, maintenance has become more difficult. He explained that the Department had received funding to replace roughly half of these instruments, and was looking into ways to fund the other half.

Mr. Marone reported to the Committee that the post conviction testing efforts on the case files that contained evidence (the "Mary Jane Burton Files") were ongoing. He reported that the Department had created an inventory system, which was used to catalog roughly 165,000 case files in the Central Lab. He explained that the review of the Northern Lab's cases was almost complete, bringing the total number of cases reviewed to about 200,000. Work would soon begin on reviewing files in the Eastern and Western laboratories as well. Once the files were all inventoried, those that were identified as containing the necessary evidence would be researched to determine if any convictions resulted. The files that satisfied selection criteria and that had involved convictions would be sent out for independent testing. Mr. Marone reported that the first batch, containing 36 cases, was already shipped out.

Dr. Krane, after requesting some clarification, asked if there was any hierarchy as to the cases being sent out.

Mr. Marone responded that cases with convictions would be reviewed regardless of the sentence, and that, even if the listed individual was no longer serving time, that the case would be re-analyzed. He stressed the point that all cases fitting the criteria would be re-tested.

Mr. Marone also reported on the status of the Department's Drug backlog, with regards to the Marijuana Field Tests. He explained that, with the combined help of examiner overtime and field test availability, the Department's backlog had been reduced to under 4,000 cases, as compared to the 16,000 case- backlog in October of 2005. Although the turnaround time had once been several months, it was now reduced to roughly 40 days. Mr. Marone attributed much of the credit to the hard work of the Department's drug chemists.

#### Breath Alcohol Instrumentation Update:

Ms. Alka Lohmann, Section Chief of the Department's Breath Alcohol Section presented on the status of the search for replacement instrumentation. Ms. Lohmann reiterated Mr. Marone's point that the current instrumentation needed to be replaced due to the increased difficulty of finding replacement parts, and not in any way due to instrument inaccuracy.

Ms. Lohmann reported that the accuracy of the current instruments and the newer models was the same, but that the newer models could offer better communication options. She then explained that some features now available include remote deactivation of users and remote upgrades. She also mentioned that the new instruments would utilize dry gas

tanks. Ms. Lohmann clarified that dry gas, as opposed to the current wet based simulator, is cleaner, faster, and requires less work for operators who would otherwise have to change the solution monthly or risk disabling the instrument. Ms. Lohmann reported that the Department anticipates issuing the invitation for bids sometime next week.

Dr. Eisenberg asked how many instruments the Department was looking to acquire. Ms. Lohmann responded that 168 instruments in agencies across the state would need to be replaced, plus additional instruments for training. In all, the Department is looking to acquire 220 new instruments.

Discussion continued.

#### Familial Searches Subcommittee:

Dr. Krane suggested that, now that his report on the three methods of familial searches is just about complete, a meeting date should be set for the subcommittee to discuss the report. He summarized his report to the Committee, and responded to questions posed by members. After discussion, Mr. Marone asked for clarification of who is on the subcommittee. In response, Mr. Bono designated Dr. Krane as the chair, and asked him to appoint the other members.

After several suggestions, it was decided that the subcommittee would be comprised of Dr. Krane as chair, Dr. Bieber, Mr. Denio, Dr. Eisenberg, and Ms. Lee. Mr. Jeff Ban, DFS Forensic Biology Section Chief, and Mr. George Li, CODIS Administrator, were asked to serve as resources for the subcommittee members.

Mr. Bono asked when the subcommittee would hold their first meeting. After some discussion, the Familial Search Subcommittee's meeting was set for May 8, 2007.

#### Human Resources Report:

Mr. Gene Colburn, Human Resources Analyst, gave a presentation on staffing issues in the Forensic Biology sections, at the request of the Forensic Science Board. In the last 12 months, in the DNA section, the department hired 12 Forensic Scientist and lost 8, 4 from the lab in Northern Virginia. He reported that, after reviewing exit interviews with the four outgoing scientists from the Northern Lab, no specific trend was discovered in the reasons the scientists were leaving the Department. Two scientists left for family reason and two left to work at other Forensic Laboratories. Discussion continued regarding sources of new hires and regional staffing issues facing outside laboratories. Ms. Lee indicated that her laboratory in Maryland experiences retention problems due to the cost of living. The cost of living has not been identified as a specific reason for leaving the Northern lab.

Dr. Krane inquired as to the status of the Department's mitochondrial laboratory staffing search. Mr. Colburn reported that the vacancies had been filled, and staff training was to begin next week.

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185 DNA Mixtures Article:  
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187 Dr. Krane directed the Committee to the article, which had been supplied to the  
188 Committee members. Dr. Krane, in light of the article, suggested two changes to current  
189 Forensic Biology protocol.  
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191 He suggests a slight change to section 9.2.2.2 of the Section Manual that will encompass  
192 a more conservative approach to dealing with DNA mixtures, changing “may be” to  
193 “shall” or “will be”. Mr. Ban responded that the addition of such language would restrict  
194 the ability of the examiners to consider other factors available to them in their  
195 examination. Dr. Bieber agreed that other factors needed to be considered, and that  
196 “shall” or “will” is too restrictive. Dr. Bieber added that he would feel more comfortable  
197 allowing the Department staff to determine the appropriate protocols for their work and  
198 to present their findings in court. Dr. Eisenberg concurred, and asserted that he was  
199 confident with the Department’s current protocol, which included using 15 loci in  
200 analysis as opposed to 13.  
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202 Mr. Denio suggested a report be generated by the Department discussing Virginia’s  
203 approach to DNA mixtures.  
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205 Dr. Krane made a motion that the Department present on DNA mixtures at the August  
206 meeting of the Committee. The motion was seconded, and passed unanimously.  
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208 Voting:  
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210 Mr. Bono explained to the Committee that his term was ending on June 30, 2007, and  
211 that he had term limitations that would prohibit his re-election. He then asked the  
212 Committee for nominations.  
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214 Ms. Given nominated Mr. Barry Fisher. There were no other nominations made.  
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216 Mr. Fisher was unanimously elected Chairman of the Scientific Advisory Committee to  
217 serve a term beginning July 1, 2007 until June 30, 2008.  
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219 Mr. Marone notified the Committee that three members were up for reappointment, as of  
220 June 30, 2007. Ms. Given, Ms. Lee, and Mr. Smith all served terms that were expiring.  
221 There was discussion of the process for suggesting names of qualified individuals to the  
222 Secretary of the Commonwealth. Ms. Gowdy was asked to speak with a member of the  
223 Secretary’s office and present at the Board meeting the following day on the proper  
224 procedure. Before moving on, Dr. Krane asked if the members whose terms were  
225 expiring would be willing to serve another term. Ms. Given explained that she was  
226 retired, and thus would need an allowance to be made to continue to serve on the Board.  
227 Ms. Lee explained that other circumstances would require her to decline. Mr. Smith  
228 announced that he would be willing to serve a second term.  
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230 Selection of Future Meeting Dates:

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232 Mr. Bono explained that the Board had selected August 8 for its summer meeting, and  
233 suggested that the Committee meeting be scheduled for Tuesday August 7, 2007. There  
234 were no objections, so the meeting date was set.

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236 Public Comment:

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238 Mr. Bono asked if any member of the public would like to address the Committee.

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240 Mr. Steven Benjamin introduced himself as a member of the defense bar, and thanked the  
241 Committee for their willingness to undertake the issue of DNA mixtures, as it is an area  
242 with which the defense is often unfamiliar. He explained that the Committee's review  
243 would help to further educate the legal community, and thus thanked the Committee  
244 members for their efforts.

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246 Adjourn:

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248 The meeting adjourned at 10:27 a.m.